REMARKS

Claims 1-8, 11-16, 19 and 21 are pending. Claims 1 and 11 have been amended for clarity. Applicants do not intend to narrow claims 1 and 11 through the amendment. All of the pending claims stand rejected. Applicants respectfully request reconsideration of the rejections based on the following comments.

Double Patenting Rejection Over U.S. 6,225,007

The Examiner rejected claims 1-5, 8-13 and 16-19 under non-statutory obviousness-typically double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,225,007 to Horne et al. (the Horne patent). Applicants incorporate by reference their arguments from the Amendment of November 19, 2006. Applicants assume that the issue surrounding this claim will need to be resolved on appeal. Applicants respectfully maintain that the rejection is improper.

Double Patenting Rejection Over U.S. 6,387,531

The Examiner rejected claims 1-5, 9-13, 17-19 and 21 under non-statutory obviousness-typically double patenting as being unpatentable over claims 18-20 of U.S. Patent 6,387,531. With all due respect, the '531 patent claims do not refer to multiple metal oxides. The Examiner noted that the claims refer to multiple metal oxides and not mixed metal oxides, although Applicant believes that the use of terminology was consistent. Applicants apologize for any inadvertent confusion regarding terminology. However, the claims of the '531 patent simply do not render the present claims *prima facie* obvious. Applicants respectfully request reconsideration of the rejection based on the following comments.

The Examiner has still not pointed to anything that is a multiple metal oxide in the claims of the '531 patent. Specifically, carbon is not a metal, and the carbon is not in an oxide form as disclosed in the '531 patent. Carbon oxides (CO or CO_2) are gases and cannot be present in solid

particles. Thus, the claims of the present application are clearly not *prima facie* obvious over the claims of the '531 patent. Since the claims of the present application are clearly not *prima facie* obvious over any claims of the '531 patent, Applicants respectfully request withdrawal of the rejection of claims 1-7, 9-15, 17-19 and 21 under non-statutory obviousness-typically double patenting as being unpatentable over claims 18-20 of U.S. 6,387,531.

Obviousness-Type Double Patenting Over U.S. 6,106,798

The Examiner rejected claims 1-5, 8, 9, 11-13, 16, 17 and 19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,106,798. With all due respect, the claims of the '798 patent do not teach or suggest multiple metal oxide particles. Therefore, these claims clearly do not render the present claims *prima facie* obvious. Applicants respectfully request reconsideration of the rejection based on the following comments.

The Examiner asserts that the mixed phase material in the claims of the '798 render the present claims obvious. Thus, the Examiner seems to be referring only to claim 11 of the '798 patent. With all due respect, the claim construction put forward by the Examiner is unreasonable in view of the specification. According to MPEP 2111 (emphasis added), "[d]uring patent examination, the pending claims must be 'given their broadest reasonable interpretation **consistent with the specification.**" Also in MPEP 2111, the "broadest reasonable interpretation must be consistent with the interpretation that a person of ordinary skill in the art would reach."

In the context of the specification and other claims, it is clear that the crystalline multiple metal oxide is a stoichiometeric material with more than one metal element within the crystal lattice. The specification refers to ternary particles with three types of atoms along the lattice sites of the crystal, such as lithium, manganese and oxygen. Thus, a crystalline multiple metal oxide is not rendered obvious by a mixed phase material comprising a single metal oxide.

In view of the clarifying comments above, Applicants respectfully request withdrawal of the rejection of claims 1-5, 8, 9, 11-13, 16, 17 and 19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,106,798.

Obviousness-Type Double Patenting Over U.S. 6,506,493

The Examiner rejected claims 1-6, 9-14, 17-19 and 21 under the judicial doctrine of obviousness-type double patenting over claims 1-31 of U.S. Patent 6,506,493. With all due respect, the **claims** of the '493 patent do not teach or suggest multiple metal oxide particles. Obiouvness-type double patenting is based on the claims and not the disclosure of the '493 patent. See MPEP 804. With all due respect, since the **claims** of the '493 patent do not refer to mixed phase materials, even based on the Examiner's incorrect claim construction, the present rejection cannot stand. Therefore, these claims clearly do not render the present claims *prima facie* obvious. Thus, Applicants respectfully request withdrawal of the rejection of claims 1-6, 9-14, 17-19 and 21 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,506,493.

Obviousness-Type Double Patenting Over U.S. 6,726,990

The Examiner rejected claims 1-5, 10-13 and 18-19 under the judicial doctrine of obviousness-type double patenting over claims 1-15 of U.S. Patent 6,726,990. With all due respect, the claims of the '990 patent do not teach or suggest multiple metal oxide particles. Therefore, these claims clearly do not render the present claims *prima facie* obvious. It is unclear what the asserted basis is for the Examiner's rejection. The claims of the '990 patent do not refer to mixed phase metal oxides. Claim 13 does refer to a polishing composition comprising different types of particles. However, the present claims refer to specific particles

comprising a multiple metal oxide composition. The claims of the '990 patent do not refer to a crystalline multiple metal oxide, which would involve a single crystalline material with at least two metal elements.

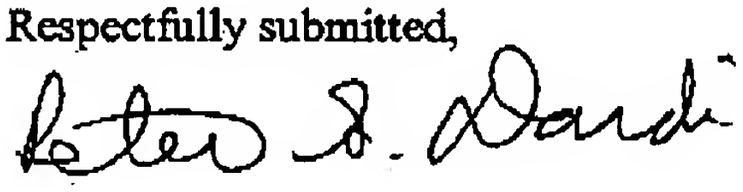
In view of the clarifying comments above, Applicants respectfully request withdrawal of the rejection of claims 1-5, 10-13, and 18-19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,726,990.

CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Peter S. Dardi, Ph.D.
Registration No. 39,650

Customer No. 62274
Dardi & Associates, PLLC
2000 U.S. Bank Plaza
220 South 6th Street
Minneapolis, Minnesota 55402
Telephone: (404) 949-5730